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4 **UNITED STATES DISTRICT COURT**
5 **EASTERN DISTRICT OF CALIFORNIA**
6

7 **ERIKSSON, LLC,**
8 **Plaintiff**
9 **v.**
10 **LOVELAND PRODUCTS, INC., a**
11 **Colorado corporation**

12 **CASE NO. 1:20-CV-0464 AWI SAB**

13
14 **ORDER REMANDING MATTER FOR**
15 **LACK OF SUBJECT MATTER**
16 **JURISDICTION**

17 **Defendant**

18 On March 31, 2020, Defendant removed products liability dispute from the Fresno County
19 Superior Court. See Doc. No. 1. The basis for the removal was diversity jurisdiction. See id.
20 The Notice of Removal states that the Plaintiff through a demand letter seeks \$3.1 million in
21 damages. The notice states that complete diversity exists because Defendant is a citizen of
22 Colorado with its principal place of business in Colorado, and Plaintiff “is a limited liability
23 company organized and existing under the laws of the State of California with its principal place
24 of business in Fresno County, California.” See Doc. No. 3.

25 A district court has “a duty to establish subject matter jurisdiction over the removed action
26 *sua sponte*, whether the parties raised the issue or not.” United Investors Life Ins. Co. v. Waddell
27 & Reed, Inc., 360 F.3d 960, 967 (9th Cir. 2004). The removal statute (28 U.S.C. § 1441) is
28 strictly construed against removal jurisdiction. Geographic Expeditions, Inc. v. Estate of Lhotka,
29 599 F.3d 1102, 1107 (9th Cir. 2010); Provincial Gov’t of Marinduque v. Placer Dome, Inc., 582
30 F.3d 1083, 1087 (9th Cir. 2009). It is presumed that a case lies outside the limited jurisdiction of
31 the federal courts, and the burden of establishing the contrary rests upon the party asserting
32 jurisdiction. Geographic Expeditions, 599 F.3d at 1106-07; Hunter v. Philip Morris USA, 582

1 F.3d 1039, 1042 (9th Cir. 2009). For diversity jurisdiction, the amount in controversy must
2 exceed \$75,000.00, and there must be “complete diversity,” which means “each of the plaintiffs
3 must be a citizen of a different state than each of the defendants.” See 28 U.S.C. § 1332(a);
4 Hunter, 582 F.3d at 1043; Allstate Ins. Co. v. Hughes, 358 F.3d 1089, 1095 (9th Cir. 2003). “The
5 strong presumption against removal jurisdiction” means that “the court resolves all ambiguity in
6 favor of remand to state court.” Hunter, 582 F.3d at 1042; Gaus v. Miles, Inc., 980 F.2d 564, 566
7 (9th Cir. 1992). That is, federal jurisdiction over a removed case “must be rejected if there is any
8 doubt as to the right of removal in the first instance.” Geographic Expeditions, 599 F.3d at 1107;
9 Gaus, 980 F.2d at 566. “If at any time prior to judgment it appears that the district court lacks
10 subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. §1447(c); Gibson v. Chrysler
11 Corp., 261 F.3d 927, 932 (9th Cir. 2001). Remand under 28 U.S.C. § 1447(c) “is mandatory, not
12 discretionary.” Bruns v. NCUA, 122 F.3d 1251, 1257 (9th Cir. 1997).

13 Here, given the demand letter and that the damages claimed are to a crop of pistachios, the
14 Court is satisfied that the amount in controversy exceeds \$75,000.00. The problem is that it is
15 unclear whether complete diversity exists. Defendant’s notice of removal alleges that Plaintiff’s
16 citizenship based on state of incorporation and principal place of business. If Plaintiff was a
17 corporation, this would sufficiently demonstrate Plaintiff’s citizenship, see Hertz Corp. v. Friend,
18 559 U.S. 77, 80-81 (2010), and thus, show complete diversity for purposes of the notice of
19 removal. Critically, Plaintiff is not a corporation. As its name expressly shows, Plaintiff is an
20 LLC. See Complaint ¶ 2. It is well established in the Ninth Circuit that, “like a partnership, an
21 LLC is a citizen of every state of which its owners/members are citizens.” 3123 SMB, LLC v.
22 Horn, 880 F.3d 461, 465 (9th Cir. 2018); Johnson v. Columbia Props. Anchorage, LP, 437 F.3d
23 894, 899 (9th Cir. 2006); see Zambelli Fireworks Mfg. Co. v. Wood, 592 F.3d 412, 420 (3d Cir.
24 2010). Defendants’ allegations regarding Plaintiff’s place of business and incorporation do not
25 establish in any way Plaintiff’s citizenship. See id.

26 It is Defendants’ burden to establish subject matter jurisdiction, see Hunter, 582 F.3d at
27 1042, and they have not done so. The law regarding the citizenship of an LLC has been clearly
28 established in the Ninth Circuit since 2006, see Johnson, 437 F.3d at 899, yet the notice of

1 removal cites only information that is relevant to a corporation. The Court has no idea what
2 Plaintiff's citizenship is. Therefore, the Court has doubts about its subject matter jurisdiction.
3 That doubt is resolved against finding subject matter jurisdiction. See Geographic Expeditions,
4 599 F.3d at 1107; Gaus, 980 F.2d at 566. Because the Court's subject matter jurisdiction has not
5 been sufficiently invoked, remand pursuant to 28 U.S.C. § 1447(c) "is mandatory, not
6 discretionary." Bruns, 122 F.3d at 1257.

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ORDER

9 Accordingly, IT IS HEREBY ORDERED that, pursuant to 28 U.S.C. § 1447(c) and the
10 lack of subject matter jurisdiction, this case is REMANDED forthwith to the Fresno County
11 Superior Court.

IT IS SO ORDERED.

14 | Dated: April 2, 2020


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